IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5686 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BV DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5686 of 1989

MR DC RAVAL for Petitioner.

Mr. Uday R. Bhatt, A.G.P. for the respondents.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/05/2002

ORAL JUDGEMENT

1. The petitioner has challenged the orders at Annexure "C" dated 4-9-1985 and Annexure "E" dated 21-11-1987 by which under two separate Departmental Inquires punishments were imposed on him. In the first order dated 4-9-1985, his two increments were to be

withheld with future effect and under the order dated 21-11-1985 also punishments of withholding two increments with future effect was imposed. The petitioner has prayed that his case for promotion to the post of Deputy Director of Land Records with effect from 1st September, 1989 should be considered as if these orders were not made against him and consequential benefits should be given to him including the retiral benefits.

2. On 21st June, 1989 charges were framed against the petitioner. That while he was working as City Survey Superintendent, Vadodara, he had without holding any inquiry under Section 37(2) of the Land Revenue Code on the basis of an application made by one Gulam Rasul Mohmed Sha mutated the Kabrastan land which was Government land. in the name of the applicant and in the process instead of requiring the Maintenance Surveyor of the concerned Ward to make note, he asked the Surveyor of another Ward to make it in order to facilitate the conversion of the said Government land into private land without holding any inquiry under Section 37(2) of the Code. It appears from the record that the petitioner gave his reply to the show cause notice on 21-7-1983. He was given a personal hearing on 21-7-1984, which he availed of, and at which he made written submissions also. He made further written submissions on 2nd February, 1985. All these were duly considered by the concerned authority and it was found from the record that the land was entered as Government Kabrastan land in the record of rights on 20th March, 1973. Even during the City Survey Inquiry, the land was declared to be Kabrastan land on 15-1-1974. The competent authority found that the xerox copy of the writing dated 4th March, 1973 purported to have been issued by some authorised officer of the erstwhile State of Baroda was not a reliable document. It was not a certified copy and the signature was not legible. Moreover, the language used therein did not appear to be any official writing. It was noticed that a stamp paper dated 13-10-1908 of eight annas was used for creating a writing dated 4-10-1923. In other words, after appreciating the xerox copies of the documents sought to be relied upon on behalf of the petitioner, the competent authority came to the conclusion that they were not reliable documents. The competent authority relied upon the record of rights entries which clearly showed that land in question was Kabrastan land.

3. As per the provisions of Section 37(2) of the Bombay Land Revenue Code, where any property or any right, in or over any property is claimed by any person

against the Government, the Collector or a Survey Officer has to make a formal inquiry and decide such claim. No such inquiry was held by the petitioner who was at the relevant time holding a responsible post of Superintendent of Land Records. The competent authority rightly rejected the lame excuse given by the petitioner that only through oversight he had made a wrong entry in the property registration card. The contention that the petitioner had filed a Revision Application on 28-10-1985 against the order of the Government is misconceived for the simple reason that no Revision would lie before the Government against its own order. No such Memo of Revision which is referred to in paragraph 3.1 of the petition is produced even uptil now. Moreover, the contention that the matter was under consideration as per the reply of the Government dated 14th June, 1989 at Annexure "D" to the petition is misconceived because that reply only refers to the letter of the petitioner dated 11th May, 1989 and it does not refer to any earlier Review or Revision dated 28-10-1985. It appears that just before filing of the petition, in order to create some excuse for the inordinate delay in his challenge against the order dated 4th September, 1985, the petitioner sent a letter dated 11th May, 1984, a copy of which is not even produced and now seeks to rely on the reply of the Government dated 14th June, 1989 simply acknowledging that letter and stating that it was under consideration. Same pattern is followed in respect of the challenge of the petitioner against the other order of punishment made on 21-11-1987 at Annexure "E" to the petition and the reply of the Government dated 6-6-1989 that the matter was under consideration is sought to be relied upon without even producing that reply or even the application in context of which it was sent.

4. In the order at Annexure "E" to the petition, it is clearly recorded that the petitioner was given an adequate opportunity of being heard and on the basis of the evidence on record, the competent authority has come to the conclusion that the charges against the petitioner that he had made purchase of furniture worth Rs.83,030/and Rs.11,780/- from his son-in-law in violation of the provisions of Contingency Rules and Financial Rules. These were very serious charges which were established against the petitioner on the basis of the evidence on record and the petitioner should thank his stars that the only punishment which was imposed on him in the subsequent order of punishment based on a separate inquiry and on different charges of serious nature which were established was only stoppage of two increments. This is a clear case of misplaced sympathy

against a responsible officer against whom charges have been duly proved on the basis of material on record, under the two impugned orders at Annexures "C" and "E" to the petition.

5. Principles of natural justice have been scrupulously observed in both the inquiries and the competent authority has for very cogent reasons held the petitioner guilty of the charges which were levelled against him in these two inquiries. The petitioner in paragraph 5 of his petition has stated that his not being promoted to the post of Deputy Director of Land Records was merely due to the orders at Annexures "C" and "E" to the petition. If that be so, it was a correct decision not to promote the petitioner who perhaps did not deserve to continue in service because of the serious nature of the charges which were proved against him and was let away with minor punishments of stoppage of two increments in both the cases proved against him. There is absolutely no substance in this petition. It is, therefore, rejected. Rule is discharged with no order as to costs.

(R.K.Abichandani,J.)

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